

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY SB 322

Call to Order: By **CHAIRMAN FRED THOMAS**, on March 17, 1999 at 11:15 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Chris Christiaens (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Subcommittee Meeting Date(s) Posted: SB 322, 3/15/1999
Executive Action:

SUBCOMMITTEE MEETING ON SB 322

CHAIRMAN FRED THOMAS called the Subcommittee meeting to order. He said they have had a Draft #2-Grey SB 322 prepared. They are going to start without **SEN. GRIMES**, they won't act without him, he is excused from this Subcommittee on **SB 322**, while Judiciary Committee is taking Executive Action.

SEN. MIGNON WATERMAN said they combined in the first gray bill all of the amendments that were received except the ones from Blue Cross/Blue Shield. She said they have tried to address the rule making and the public hearing section of the bill. She said the 20 percent is used in other states and is an appropriate amount. She referred to draft 2 of the gray bill.

EXHIBIT (phs60b01)

SEN. CHRIS CHRISTIAENS asked if the grey bill had been worked on by all parties and the amendments that they have before them are still issues that need to be resolved. **SEN. WATERMAN** didn't know if there was other amendments.

Chris Tweeten, Chief Council of Department of Justice, said there are still two major issues that exist with this bill. He said they still need to define the definition of material amount which is 20 percent with a five year look back built in. He said they need to decide if the 20 percent is acceptable with the look back. He said with the invalidness of CI-75 they would like to change the contract cost provisions. He said grey bill draft two **(EXHIBIT 1)** also does not delete the moratorium language in the effective date section. He said grey bill draft two **(EXHIBIT 1)** differs from gray bill draft one, **EXHIBIT (phs60b02)** in its definition of non-profits.

SEN. THOMAS said perhaps they should discuss look back first. He asked how many positions do they have on look back. **Chris Tweeten** said there is three. He said one is the deletion of the look back language. The second one is in the grey bill now which is the Montana Hospital Association's amendment. **(EXHIBIT 1)** He said the third is the MHA amendment with the additional language that they have proposed. He said if they look at a present transaction they can go back to an earlier transaction to decide if it requires a material amount of assets or not. He said if they decide that the present transaction along with two or three earlier ones gives them more than 20 percent they can't go back and invalidate the earlier transactions, and deal only with the present transaction. This language is found on page 8, line 21-24. **(EXHIBIT 1)**

{Tape : 1; Side : A; Approx. Time Counter : 8.0}

Tom Ebzery, Yellowstone Community Health Plan, said he would like to delete the look back language. He read page 1, lines 28-30 of the gray bill. He said they would like to raise that threshold to 40 percent with no look back. He said this would make normal business transactions go much smoother.

Michael Becker, Blue Cross, Blue Shield, said they support the first version of the gray bill. **(EXHIBIT 2)** He said they would like the deletion of the look back provision all together.

SEN. CHRISTIAENS asked what has occurred as far as look back in other states that have adopted this kind of legislation. **Michael Becker** said they have looked at model act and conversion statutes in other states. He said there is no look back provision in the Attorney General's model act. He said they are aware of no other state that has a look back provision. He said they think the look

back provision is unworkable even with the qualifications. The look back allows for the aggregation of non-material, ordinary business transactions in a five year floating period. It doesn't allow for finality. He said nobody will know if they enter into these business transactions that they won't be looked at later and subjected to a public hearing, revalued and possibly voided. He said if the look back provision is subject to review then it can be voided. He said there is no other look back provisions in any of the other statutes. He said when they try to determine the material amount in the look back provision as proposed by the Montana Hospital Association, the Attorney General is not limited at looking at transactions that are outside the usual course of business. He said there is that exclusion under the definition of non-profit health care conversion transaction that it does not include investment of funds or other disposition of financial assets of a non-profit in the ordinary course of business. He said when it comes to aggregating transactions to determine a threshold for purpose of material and look back anything is fair game.

SEN. CHRISTIAENS asked how do they tie a five year look back and the type of transactions that took place during that time and what constitutes that. **Chris Tweeten** said the five year period is triggered by the application. He said under existing law the Attorney General has the power to go to court and try and undo a transaction that dissipates charitable trust assets. He said the only time limit is under the current statutes. He said anything that is under that time period, the Attorney General can exam under his existing power. He said nothing in this bill will change that.

SEN. CHRISTIAENS asked what are the current statute of limitations. **Chris Tweeten** said the statute says that a trustee is to report to the beneficiaries of the trust, and if that report is made in writing the Attorney General has three years to act upon that report.

{Tape : 1; Side : A; Approx. Time Counter : 19.2}

SEN. THOMAS said if they accept the no look back how would that work with issues that may come up in the future. **Michael Becker** said if they impose a look back they will have an entirely new regulatory scheme in addition to the current authority.

SEN. CHRISTIAENS asked if they could go back three years under current law. **Michael Becker** said yes.

Susan Fox discussed the amendments SB032208.asf.

EXHIBIT (phs60b03) She said amendments SB032209.asf is where the

no look back comes in to play. **EXHIBIT (phs60b04)** She discussed these amendments. She also handed out amendments SB032210.asf, but did not discuss them. **EXHIBIT (phs60b05)**

Steve Browning, MT Hospital Assoc., said the 20 percent standard was selected because that is what they found in other states. He said if they create a statute where they allow people to have control of a non-profit asset, that is tax exempt, then they should be held to some kind of workable standard. He said non-profits need to be held to standards and they should be realistic. He said what they are talking about is non-profits giving up control, but the question is how much control should they give up. He said it is important that there is a context for this. He said this is why they set it at five years, but perhaps it should be three years.

SEN. GRIMES asked if the creeping conversion issue is dealt with in the years or is there some other portion of the bill that deals with other profit conversions. **Chris Tweeten** said this is the primary mechanism that is in there to deal with the creeping conversion.

SEN. GRIMES asked if they are looking at the five year look back which is equal to any conversions in the last five years. **Chris Tweeten** said yes.

SEN. GRIMES said under the current statute is there any look back. **Chris Tweeten** said no, but they do have the opportunity to look back for three years.

SEN. GRIMES said there appears to be a scale and is the 20 or 40 percent a more accurate figure. **Jim Ebzery** said he didn't know for sure how the MHA arrived at the 20 percent. He said they had looked at the IRS code with the Attorney General and it is 85 percent. However, **SEN. WATERMAN** was not interested in that, someone else proposed 51 percent and she didn't like that. 20 percent with the look back and the 5 year period would be five percent of their assets and this is unreasonable. The look back provision should be deleted. He said there should be an aggregated amount over a year's period at 40 percent. Forty percent would be a significant asset and would not hit small and ordinary transactions.

{Tape : 1; Side : B; Approx. Time Counter : 4.0}

Michael Becker said the piece meal selling off of assets by hospitals doesn't happen in the real world. He said there is regulatory review in the selling of these assets. He said the same is true for health plans. He said they can't just start

selling their assets and have nothing left. He said the insurance commissioner does yearly audits of HMO's. He said when they change ownership they go through that regulatory process of public review. He said if they piece meal away their assets to where they have nothing left they will be caught in that annual audit.

SEN. GRIMES said if they sold off 39 percent of their operation and if they could financially gain from that would that be an option or is there other checks and balances that must be looked at. **Michael Becker** said if those assets are pieced away under the current statute they will be subjected to review and will be caught in the insurance commissioner's audits, and they will get caught up in regulatory filings regarding the certificate of authority.

SEN. GRIMES asked what about for hospitals. **Michael Becker** said they are addressed in other areas of the statute. He said there are licensing areas, certificate of need review statutes, etc.

SEN. GRIMES asked if they are going to get caught up in a review issue to begin with, is it that significant of an issue if they include moderate look back. **Michael Becker** said it is unnecessary and unworkable to impose yet another regulatory burden such as a look back that doesn't exist in any conversion statute in any other state. He said it doesn't even appear in the Attorney General's model act from which most of this bill comes from. He said it is not necessary, because it creates an unworkable situation. He said if they have a five year or three floating period of time in which any transaction can get swept into the pot to determine if it has crossed the line of materiality, then there is no finality. He said there is the possibility that once they are subjected to the hearing process that they can be voided by the Attorney General.

{Tape : 1; Side : B; Approx. Time Counter : 11.8}

SEN. CHRISTIAENS asked about the audit that is done for these organizations. **Peter Funk, MT Auditors Office**, said there is not one word in their certificate of authority statute that gives them any authority to look at conversions. He said they could use common law to address those issues.

SEN. CHRISTIAENS said if an audit had been done and there had been a creeping change of 20 percent would that be enough of a warning for the office to do more of an inquiry. **Peter Funk** said there is no set of criteria that the Auditor is looking at to compare that says if they see a 20 percent disposition of assets,

they think it is a conversion. He said their audits are designed to protect policy holders and insurer's interests.

SEN. THOMAS asked where is the reality in this bill. **Chris Tweeney** said they would ask for all of the transactions that they have engaged in over the past five years. He said they have asked Blue Cross/Blue Shield to provide them transactions before for a certain period of time.

{Tape : 1; Side : B; Approx. Time Counter : 18.8}

SEN. CHRISTIAENS asked since the statute of limitations is three years what power do they have to look at certain situations for five years. **Chris Tweeney** said they didn't think of it in those terms.

SEN. CHRISTIAENS said if the statute of limitations if for three years would they think about a look back of three years the same as charitable trusts with the 20 percent provision.

SEN. GRIMES said they need to move slowly and cautiously to balance the interests of these groups. He said he would like to not have the look back and not raise the percentage, but make it reasonable.

SEN. THOMAS said they will meet tomorrow to prepare a final gray bill for the committee.

ADJOURNMENT

Adjournment: 12:20 P.M.

SEN. DUANE GRIMES , Vice-Chairman

MARTHA MCGEE, Secretary

AB/MM

JODI PAULEY, Transcriber

EXHIBIT (phs60bad)